SUPREME COURT, U. S.

FILED
MAY 16 1969
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 1263

JAPAN LINE, LTD., KAWASAKI KISEN KAISHA LTD., MITSUI O.S.K. LINES, LTD., NIPPON YUSEN KAISHA, LTD., YAMASHITA-SHINNIHON STEAMSHIP COMPANY, LTD., and MARITIME COMPANY OF THE PHILIPPINES,
Petitioners,

v.

SABRE SHIPPING CORPORATION, *Respondent.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

REPLY BRIEF FOR PETITIONERS

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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Respondent's Brief in Opposition contains a serious misstatement of fact which must be corrected if Respondent's argument that the Court of Appeals denial of relief was not an abuse of its discretion is to be properly evaluated by this Court.

Respondent states (p. 2) "it is undisputed that the factual issues at bar were previously the subject of Maritime Commission proceedings spanning some five years." This implies that the Commission had before it the critical issues under Section 15 upon the resolution of which Petitioners' antitrust immunity depends. Respondent knows very well that Section 15 issues were not before the Commission and it impedes proper review of this case for Respondent to imply that they were.

Contrary to Respondent's statement, it is undisputed that factual issues under Section 15 in the treble damage action were not before the Commission in its Section 18(b)(5) investigation.* Respondent must necessarily concede this to be true.

With the factual road thus made straight, review by this Court of the exercise of discretion by the Court of Appeals must be illumined by the principle stated in *Union Tool Company* v. *Wilson,* 259 U.S. 107, at 112:

> ". . . [L]egal discretion . . . does not extend to a refusal to apply well-settled principles of law to a conceded state of facts."

In this case, the facts as to Section 15 issues being conceded, Petitioners submit that the ambit of discretion has been reduced to zero by this Court's holdings in *U. S. Navigation Co.* v. *Cunard S.S. Co.,* 284 U.S. 474, *Far East Conference* v. *U. S.,* 342 U.S. 570, *Fed-*

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* Judge Ryan's opinion in the District Court makes it clear that Section 15 was not included in the Commission's order of investigation in Docket 1083. Petition pp. 1b *et seq.*, and in particular p. 17b, note 2. See also Petition p. 14.

eral Maritime Board v. *Isbrandtsen Co.*, 356 U.S. 481, 496-499, and *Carnation Co.* v. *Pacific Westbound Conference*, 383 U.S. 213.

Respectfully submitted,

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